

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

May 11, 2012 through May 17, 2012

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

DOLAN, MATTER OF v EFMAN:

2ND Dept. App. Div. judgment of 4/24/12; dismissed proceeding; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - WHEN REMEDY AVAILABLE - FAILURE TO DEMONSTRATE CLEAR LEGAL RIGHT TO RELIEF; App. Div. denied a CPLR article 78 petition in the nature of mandamus to compel a Suffolk County Court Judge to vacate an order denying petitioner's motion for release of his presentence investigation report, and dismissed the proceeding.

HARRIS (JAMES A., JR.), PEOPLE v:

2ND Dept. App. Div. order of 1/10/12; reversal with dissent; leave to appeal granted by Dillon, J., 4/25/12; Rule 500.11 review pending;

CRIMES - RIGHT TO COUNSEL - WHETHER DEFENDANT'S STATEMENT DURING CUSTODIAL INTERROGATION, "I THINK I WANT TO TALK TO A LAWYER," INVOKED HIS RIGHT TO COUNSEL; WHETHER STATEMENTS THEN GIVEN BY DEFENDANT IN ABSENCE OF COUNSEL MUST BE SUPPRESSED; HARMLESS ERROR;

Orange County Court convicted defendant, upon a jury verdict, of murder in the second degree, kidnapping in the first degree and tampering with physical evidence, and imposed sentence; App. Div. reversed, granted that branch of defendant's omnibus motion which was to suppress his statements to law enforcement officials, and ordered a new trial.

MEJIAS (MIGUEL), PEOPLE v:

1ST Dept. App. Div. order of 7/7/11; affirmance; leave to appeal granted by Jones, J., 4/24/12;

CRIMES - JURORS - SUGGESTION OF PREMATURE DELIBERATIONS - WHETHER TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN, AT THE CLOSE OF EVIDENCE AND PRIOR TO SUMMATIONS, THE COURT RECEIVED A NOTE FROM ONE JUROR REQUESTING CERTAIN INFORMATION, IN RESPONSE TO WHICH THE COURT DID NOT CONDUCT ANY INDIVIDUAL INQUIRY OF THE JURORS, BUT RATHER DIRECTED ITS INQUIRIES TO THE JURY AS A GROUP;

Supreme Court, New York County convicted defendant of criminal possession of a controlled substance in the first degree and conspiracy in the second degree, and sentenced him to concurrent terms of 13 years and 5 to 15 years; App. Div. affirmed.

POVOSKI, MATTER OF v FISCHER:

3RD Dept. App. Div. judgment of 3/18/12; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - MISBEHAVIOR REPORT - SUBSTANTIAL EVIDENCE;

App. Div. confirmed determination of respondent Superintendent of Clinton Correctional Facility finding petitioner guilty of violating certain prison disciplinary rules, and dismissed the CPLR article 78 petition.

PUTNEY et al. v PEOPLE OF THE STATE OF NEW YORK &c.:

3RD Dept. App. Div. order of 4/5/12; affirmance; sua sponte examination of whether (1) so much of the App. Div. order as affirmed so much of the 8/19/10 Supreme Court order as denied plaintiffs' cross motion to amend the complaint finally

determines the action within the meaning of the Constitution; (2) so much of the App. Div. order as dismissed the appeal from the 2/24/11 Supreme Court order denying reargument finally determines the action within the meaning of the Constitution; and (3) a substantial constitutional question is directly involved to support an appeal as of right;

LIMITATION OF ACTIONS - EMINENT DOMAIN - DISMISSAL OF DECLARATORY JUDGMENT ACTION BASED ON STATUTE OF LIMITATIONS AND LACHES;
DENIAL OF MOTION(S) TO AMEND COMPLAINT AND FOR REARGUMENT;
Supreme Court, St. Lawrence County granted defendants' motion to dismiss the complaint and denied plaintiffs' cross motion to amend the complaint; App. Div. affirmed.

CITY OF YONKERS, MATTER OF v YONKERS FIRE FIGHTERS, LOCAL 628, IAFF, AFL-CIO:

2ND Dept. App. Div. order of 12/27/12; reversal; leave to appeal granted by Court of Appeals, 5/3/12;

ARBITRATION - MATTERS ARBITRABLE - WHETHER CIVIL SERVICE LAW § 201(4) AND RETIREMENT AND SOCIAL SECURITY LAW § 470 BAR ARBITRATION OF DISPUTE - WHETHER COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF YONKERS AND FIRE FIGHTERS' UNION WAS "IN EFFECT" ON THE EFFECTIVE DATE OF ARTICLE 22 OF THE RETIREMENT AND SOCIAL SECURITY LAW;

Supreme Court, Westchester County denied a petition to permanently stay arbitration and dismissed the proceeding brought pursuant to CPLR article 75; App. Div. reversed and granted the petition to permanently stay arbitration.

ZHENG, et al. v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 3/20/12; affirmance; leave to appeal granted by Court of Appeals, 5/8/12;

LANDLORD AND TENANT - RENT REGULATION - CLASS ACTION TO BAR TERMINATION OF RENT SUBSIDY PAYMENTS UNDER THE ADVANTAGE PROGRAM RUN BY THE NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES;
MUNICIPAL CORPORATIONS - CONTRACTUAL OBLIGATIONS; SPECIFIC PERFORMANCE, DECLARATORY AND INJUNCTIVE RELIEF;

Supreme Court, New York County, after a nonjury trial, dismissed the causes of action for specific performance, injunction and deprivation of due process, and declared that defendants are not contractually obligated to continue making rent subsidy payments under the Advantage Program; App. Div. affirmed.